

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION**

ANNIE MASON BENSON,

Plaintiff,

vs.

SALLIE MAE, INC.

Defendant.

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Case No. 8:10-CV-00497-JMC

DEFENDANT’S REPLY TO ORDER GRANTING MOTION TO STAY

Defendant Sallie Mae, Inc. (“Sallie Mae”), pursuant to the Court’s October 29, 2010, Order (Docket No. 29), submits its Amended Scheduling Order and states as follows:

1. On May 4, 2010, the Court entered its Scheduling Order.
2. On or about October 15, 2010, the parties agreed to engage in mediation, and request a stay of the current scheduling order deadlines, with a new order to be submitted if the mediation was unsuccessful. At that time, the parties agreed that the deadlines in the scheduling order would be extended to reflect the period of time discovery was abated during the stay.

Defendant did not agree at that time, or subsequently, to additional extensions of the discovery period in light of the fact that Defendant has sought a prompt trial of this matter since the outset.

3. On October 29, 2010, pursuant to the parties’ Joint Motion, the Court stayed discovery pending the parties’ scheduled mediation.
4. The parties’ mediation, conducted by Magistrate Judge Kevin McDonald, began on November 29, 2010, and concluded on December 2, 2010 with Defendant’s counsel’s report

to the Court that the parties had not reached a settlement following the November 29, 2010 in-person mediation.

5. Following the unsuccessful conclusion of mediation, Defendant's counsel provided a draft amended scheduling order to Plaintiff's counsel for review, which allowed for modest extensions of the remaining scheduling order deadlines, to account for the fact that the deadlines now encompass the holidays, and setting discovery to close on January 31, 2011.

6. Plaintiff's *pro hac vice* counsel has represented that Plaintiff will not agree to the deadlines proposed by Defendant's counsel, but demands an additional thirty (30) days be added to each of the Scheduling Order deadlines proposed by Defendant, in addition to the extensions to which Defendant already voluntarily agreed in anticipation of such a request by Plaintiff.

7. Though Plaintiff's *pro hac vice* counsel has indicated that he will be traveling the last two (2) weeks of December, Plaintiff has provided no indication of why any remaining depositions cannot be conducted during January 2011. At the time the parties agreed upon a stay for mediation, there were only forty-five (45) days remaining for discovery. The revised order proposed by Defendant now gives Plaintiff 56 days for discovery – which is ample time to complete all depositions.¹

8. Defendant will be prejudiced by further unnecessary extensions to the discovery period as legal fees will continue to mount and also because Defendant expects the case to conclude with its dispositive motion, which it will file at the close of discovery.

¹ Although some uncertainty remains regarding the number of depositions permitted for each party, Plaintiff has requested a maximum of fifteen (15) depositions, which can be accommodated by the remaining discovery period.

9. Therefore, Defendant respectfully requests that the Court enter the proposed Amended Scheduling Order emailed to the Court's ECF address, childs_ecf@scd.uscourts.gov, contemporaneously with the instant filing.

Dated this 7th day of December, 2010.

Respectfully submitted,

By: s/ Peter B. Murphy
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Attorneys for Defendant Sallie Mae, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2010, I electronically filed the foregoing **DEFENDANT'S REPLY TO ORDER GRANTING MOTION TO STAY** with the Clerk of Court using the CM/ECF system, and that a copy has been electronically served via CM/ECF on

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